IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 293 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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COMMISSIONER OF INCOME TAX

Versus

SUBODHCHANDRA & CO

Appearance:

1. INCOME TAX REFERENCE No. 293 of 1987
MR BB NAIK with MR MANISH R BHATT for Petitioner No. 1
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 28/08/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

The following questions have been referred for our opinion in respect of the assessment year 1980-81:

(i) "Whether on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in allowing the claim of the assessee in respect of clearing, forwarding and shipping to the extent of Rs.31,995/- ?"

(ii) "Whether on the facts and in the circumstances of the case, the Tribunal is right in law in allowing the claim of the assessee in respect of commission of exports amounting to Rs.95,975/-?"

2. We have heard Mr. B.B. Naik learned Standing Counsel for the Revenue. Though served, none appears for the respondent - assessee.

3. As far as question No.1 is concerned, the provisions of section 35 B (1)(b)(iii) are so clear that the expenditure incurred by the assessee in respect of clearing, forwarding and shipping of goods to their destination outside India would automatically stand excluded while computing the export market development allowance payable under the main provision of section 35 B (1) (a). In view of the clear statutory provision, such an expenditure could never be considered while giving the assessee the benefit of the export market development allowance. The same view has been taken by this Court in Isabgul Export Corporation vs. Commissioner of Income Tax 200 ITR 797.

We accordingly answer question No.1 in the negative i.e. in favour of the Revenue and against the assessee.

4. Coming to question No.2, Mr. Naik learned Additional Standing Counsel for the Revenue submits that in view of the decision of the Apex Court in CIT vs. Stepwell Industries Ltd. 228 ITR 171, the Tribunal had clearly erred in allowing the claim of the assessee in respect of the commission of exports though it does not fall under any of the items specifically enumerated in subclause (b) of subsection (1) of section 35 B.

5. We find considerable substance in the contention raised by Mr. Naik. It has been held by the Apex Court in C.I.T. vs. Stepwell Industries Ltd. 228 ITR 171, that in order to get the deduction under section 35 B, the assessee will have to prove that the expenditure was

incurred during the previous year wholly and exclusively for the purposes set out in clause (b) of section 35 B(1). There cannot be any blanket allowance of the expenditure. Every case has to be discussed specifically and the expenditure must be found to be of the nature mentioned in any one of the subclauses. If the expenditure does not fall in any of these categories, it cannot be allowed as a deduction. In that case also, the controversy was about the commission of exports paid by the assessee for which deduction was claimed under section 35 B, and the Apex Court negatived the claim for export market development allowance in the case of commission paid for exports. In view of the aforesaid decision, we are not in a position to accept the reasoning given by the Tribunal following the decision of Special Bench in J. Hemchand & Co. (1 SOT 150) that the commission for exports would fall in sub-clauses (i) and (ii) of clause (b) of section 35 B (1).

6. In view of the above discussion, we answer question No.2 in the negative i.e. in favour of the Revenue and against the assessee.

The Reference is accordingly disposed of with no order as to costs.

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